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C O N F I D E N T I A L SECTION 01 OF 03 KYIV 001027

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SUBJECT: UKRAINE: LITTLE POLITICAL OR LEGAL PROGRESS, BOTH
TEAMS TURN BACK TO THE STREETS

REF: A. KYIV 988

[1](#)B. KYIV 998

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Classified By: Deputy Chief of Mission Sheila Gwaltney for reasons 1.4(a,b,d).

[1](#)1. (C) Summary. With President Yushchenko on a one-day trip to Poland April 27 and the ruling coalition trying to decide on its strategy in the face of the new decree ordering Rada elections for June 24, little progress was made on April 27 toward resolving the political crisis. The Constitutional Court sat behind closed doors--Our Ukraine MP Knyazevych claimed to the press that 17 of the 18 judges wanted to throw out the case regarding Yushchenko's first decree, but the Court press secretary indicated only that the review of the case continued. The coalition's new appeal of Yushchenko's second decree, signed by more than 160 MPs, was formally registered with the Court. PM Yanukovych called an extraordinary Cabinet meeting for April 28 to discuss the CabMin position on the decree; the coalition organized a rally on the Maidan starting at 1600, with Yanukovych addressing the crowd of about 7,000 calling for Yushchenko to annul all decrees and proposing simultaneous presidential and parliamentary elections. In private, Tymoshenko countered public statements that her bloc would not go back to the Rada to work on pertinent legislation in the event of a compromise, telling the Ambassador that if necessary, BYuT deputies would return to the Rada for a week to pass election-related legislation, but only if early elections were agreed. The opposition has announced a rally for the evening of April 28 on European Square, with Yushchenko and Tymoshenko scheduled to attend.

[1](#)2. (C) Comment. The PM confirmed to the Ambassador today that he and the President have not spoken since the second decree was issued. Until Yushchenko and Yanukovych resume their direct discussions, there is unlikely to be much progress. Ambassador and his German counterpart continue to impress this point on all sides, but with Yanukovych out of the country April 26 and Yushchenko away April 27, there has been little opportunity. Ministers and MPs from the coalition told former Ambassador Carlos Pascual April 27 that the president's team and Tymoshenko deserved the blame for the lack of progress, arguing that once again the President had been talked into a confrontational move by issuing the second decree. On the coalition's side, the Rada still refuses to acknowledge the legality of either decree, pending court review, and passed new legislation repeating an earlier ban on the the National Bank from financing any elections, and the coalition continues to block the Central Election Commission's work via a sick-out. Interestingly, Regions MP and financier Rinat Akhmetov told the Ambassador that he

opposes the idea of simultaneous presidential and parliamentary elections. End summary and comment.

Coalition: The President's Team Doesn't Want Compromise

13. (C) During an April 27 meeting with the Ambassador and former Ambassador Pascual, PM Yanukovych was clearly still angry about President Yushchenko's issuance of a second decree, calling the decision a "unilateral act" that "broke the agreement on stopping sharp actions and consultations, indicated a withdrawal from the discussions" and caused an "escalation in tensions." He confirmed that he had not yet spoken to the President since the issuance of the second decree. The PM said that he had been hopeful at the beginning of the week about a possible compromise, and he still believed that a compromise was an important part of any solution. He still was not ruling out the possibility of early elections as part of a deal, but worried about establishing a bad precedent. However, Yanukovych noted that even if early elections were agreed, there still needed to be a new law on elections and a realistic date that should be negotiated among the parties. Yanukovych stressed that he and the coalition "did not want to weaken the President." What was now important, in the PM's view, was "finding a way to get back to where we were" in the negotiations. However, Yushchenko's second decree meant that they would have to start the process from scratch. Yanukovych said that he has called an emergency cabinet meeting on April 28 to discuss next steps. (Embassy Note. April 28 will be a government working day in order to give workers holidays on April 30 and May 1 and 2. End Note.)

14. (SBU) Rada Speaker Moroz contended to former Ambassador Pascual and poloff April 27 that Yushchenko knew that a political compromise could be reached in three days. Unfortunately, the "Mukacheve team" (a reference to Zakarpatiya native Baloha, head of the Presidential

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Secretariat) and Tymoshenko wanted conflict, and they had

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talked Yushchenko into supporting their line, even though Our Ukraine would lose if there were new elections. The broader working group that had met on April 25 (ref A) had been scheduled to present an action plan to Yushchenko and Yanukovych on April 27, but the President's team had inserted items into the document that they knew were not achievable, setting the process up for failure, he claimed.

15. (SBU) Minister of the Cabinet of Ministers Tolstoukhov, in the Rada to hear a budget discussion, claimed to Pascual and poloff that he had heard about an alleged third Presidential decree in preparation that would aim to dismiss the Cabinet. When Tolstoukhov had left the broader working group on April 25 at 2000, he had thought they had made progress (Note: press reports at the time said nothing had been achieved. End note). Yushchenko's decree announcement on television 90 minutes later shocked him. How, he asked rhetorically, could someone conduct negotiations and write such decrees at the same time and claim to be working in good faith?

16. (C) Also on April 27, Regions MP and financier Rinat Akhmetov told Ambassadors Taylor and Pascual that it was critical to restart negotiations between the President and PM in the "small format." It was important to Akhmetov that the country come of this "stronger than it went in," and he echoed Yanukovych's concern that no precedents be established without legal justification. Akhmetov argued that the CC decision should not be thwarted. Interestingly, he opposed the idea of any compromise that resulted in early elections for both President and Parliament and instead floated the idea of a nationwide referendum on whether to hold early elections at all, noting that this was his own idea, not the coalition's. (Note: an idea that the coalition has supported

as part of a possible deal for agreeing to early elections.
End note.)

Perspective from the Rada: Still Working

¶17. (SBU) Although Moroz announced that 260 MPs were registered in the session hall on April 27, Embassy staff saw only 150 or so during our morning visit, highlighting the common practice of MPs collecting voting cards to vote for absent colleagues. MPs from the Party of Industrialists and Entrepreneurs of Ukraine (PIEU), which broke away from OU in late March, provoking Yushchenko to issue his April 2 decree, sat in their original OU seats, although they had replaced their OU flags with PIEU flags. Rogue OU MP Holovatiy sat by himself in the front of the OU section. Regions MPs had locked the diplomatic and journalist balconies and would not let us in, as they have done sporadically since last July. The Cabinet, including PM Yanukovich, had been called in to discuss budget amendments, but when the issue was not discussed, they immediately left the session hall.

¶18. (SBU) The Rada passed a resolution with 260 votes on April 26 stating that Yushchenko's second decree was groundless. The Rada also instructed the National Bank not to provide funding for new elections. They did, however, commend the lack of language in the new April 25 decree immediately banning the Rada from working. (Comment: Yushchenko's April 2 decree attempted to suspend the Rada's work, seemingly in contradiction with Article 81 of the constitution, which states that the old Rada works until the new one is seated.)

Tymoshenko: Willing to Give a Little

¶19. (C) Opposition leader Tymoshenko told Ambassador on April 26 that she would support suspension of Yushchenko's decree and she would bring her faction back to the Rada if necessary to complete legislation relevant to holding new elections. However, she implied that this would only occur if there were an agreement that new elections would happen at some point. Her private comments suggest a more flexible position than her public statements, which have said only that she supports the June 24 election date and highlighted the submission of MP resignation letters to Yushchenko. Tymoshenko also confirmed that Yushchenko and she would be present at the European Square rally planned for April 28.

Constitutional Court Remains in Closed Session

¶10. (SBU) OU MP Knyazevych claimed to the press late April 26 that 17 of the 18 CC judges supported dismissing the petition on the first presidential decree because there was no longer a valid document to consider. However, the Court's press service would only state April 27 that the Court remained in

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closed session considering the case. The Court did acknowledge it had received the coalition's new appeal of Yushchenko's second decree. The coalition's new appeal of Yushchenko's second decree, signed by more than 160 MPs, has now been formally registered with the Court.

Court Rulings, Reinstatements, and judicial appointees

¶11. (SBU) In compliance with an earlier Supreme Court ruling from March 13, Yushchenko on April 26 reinstated Yevhen Zhovtyak as Kyiv oblast governor; Zhovtyak had successfully complained he was fired unfairly (while on leave status). The President then immediately fired Zhovtyak again. Comment: The Zhovtyak maneuver, coming the same day Yushchenko reinstated Piskun as General Prosecutor, is suggestive of an effort to show compliance with court rulings and thereby lend legitimacy to the legally dubious

reinstatement of Piskun.

¶12. (SBU) Regions MP Miroshnychenko told us that the Rada's April 27 agenda included the formation of an ad hoc investigatory commission to find out why the Shevchenko Court had approved Piskun's appeal of his firing as Prosecutor General and his demand to be reinstated. Miroshnychenko suggested that some sort of a political deal, not due process, was concluded. Miroshnychenko said the commission would also look at several of Yushchenko's recent judicial appointments, some of which seemed odd to the coalition.

Taking It Back to the Streets

¶13. (U) An April 27 coalition rally on the Maidan attracted about 7,000 government supporters, and featured appearances by PM Yanukovich, Speaker Moroz and Communist Leader Symonenko. Yanukovich urged Yushchenko to annul all of his decrees and called for any early elections to be both for president and parliament. The PM said that he supported the constitution, the rule of law and human rights, and argued that Yushchenko had been manipulated by his presidential administration. As a result, Yushchenko was attempting to usurp power in all branches of government.

¶14. (SBU) An opposition rally is scheduled for European Square the evening of April 28. Tymoshenko and other opposition leaders are expected to address the crowd; President Yushchenko is expected to attend, but it is not known yet whether or not he will speak. (Note. It will be interesting to see how many supporters the opposition will attract given the start of a four-day holiday in Ukraine. End Note.)

¶15. (U) Visit Embassy Kyiv's classified website:
www.state.sgov.gov/p/eur/kiev.
Taylor